

# **INSOLVENCY AND BANKRUPTCY CODE**

**CA. Pravin Navandar, CA. Mukund Mall**

**State Bank of India V/s. Anil Dhirajlal Ambani (ADA) ( Personal Guarantor) order dated 20.08.2020. NCLT, Mumbai.**

**Application by the SBI against a Personal Guarantor of the CD for orders u/s 97(3) of the IBC, 2016**

Mr. ADA has given personal guarantee (PG) in favour of SBI for loans taken by (RCOM) and (RITL). Both these loans accounts became NPA. RCOM and RITL were undergoing (CIRP). In view of default, SBI invoked PG, notice not responded. ADA had also provided PG to the Chinese Banks, they had initiated recovery proceedings in UK. ADA intimated to SBI that in view of ongoing CIRP the PG will be rendered redundant. UV Asset Reconstruction Company has submitted a Resolution plan for RCOM and Reliance Digital Platform and Project Services Limited for RITL and that both plans would discharge all the liabilities hence invocation of Section 97 i.e. insolvency proceeding against the PG's ADA, is uncalled for in the present scenario. SBI has filed the application, based on the apprehension that the Chinese Banks might take steps to enforce Hon'ble UK High Court's Order by attachment or restraint of the ADA- PG's assets in India and abroad. In view of the SBI filing of the Petitions on 12.03.2020 the interim moratorium has come into force. Therefore, all legal actions proceeded against the ADA – PG herein shall be stayed and the creditors of the ADA cannot initiate any legal action. 60(2) of the IBC provides PG can simultaneously be filed even though CIRP is going on against the CD.

The Hon'ble Supreme Court has clearly held that notwithstanding pendency of the Resolution Plans, the PG can be proceeded against u/s 60(2) read with sections 95 and 97(3) of the Code. Therefore Hon'ble NCLT in initiated proceedings U/s. 97 against ADA without waiting for the the resolutions of RCOM & RITL is achieved.

Note: Above order stayed by Delhi High Court vide order dated 27.08.2020. SBI has moved the SC seeking a vacation of the stay granted by Delhi High Court on personal bankruptcy proceedings against ADA.